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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,916	05/11/2001	Derek Aldcroft	PM277889	3570

909 7590 11/04/2003

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EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 11/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 37-40 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 110.

Claims 24-36, 50-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rollen – WO 93/09817.

The rejection of record is maintained, as an obviousness rejection. Applicant argues no biocide present until after wall application, however, the particulate composition clearly can adsorb, releasably, biocide, and thus, if so desired, could be used in the manner applicant, but not Rollen intends. The rejection holds, because it is the composition, not the intended use, that is the composition, to the intended use, that is claimed are variations of the specific zeolite, and sizes, inclusive of the zeolites of Rollen, thus with the same, non critical, characteristics.

Claims 24-28, 31, 32, 36, 50, 51 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ohno - 4579779.

See fig. 2 – amorphous silica, with a biocide of liquid-based medium, releasably adsorbed (col. 1, bottom –col. 2, top) as a pore size up to 500 angstroms, with particle size less than 300 microns; col. Exemplified are 80 micron so, 1000 A pore to 100 micron, 500 A pore (col. 2, top, col. Bottom) thus, within the instant BET range and pore

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area of claim 27-30, 51. Biocides include ethyl alcohol (col. 3, top) pesticides – undesignated and fungicides. Applications (Examples) are as coating – paints.

Claims 24-27, 31-35, 41-47, 50 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over anticipated. Burke et al EP 0106562.

Methods for Biocidally protected formulations are disclosed, using the instant isothiazalones (p. 39 at instant concentrations, with the instant amorphous silicas, composition are useful to control microorganism (p. 5) lines 26-31), convenient to transport, safe to handle (p.7), lines 15-27) and useful in cosmetics, aqueous systems, and oil field muds (p. 8, lines 9-25). Releasability is seen without degradation, when tested in water for day 1 example 1.

The potency, MIC, A, R would all be as of the instant particulate composition, as would be the pore size, pore area, particle size and BET, since the instant products, as are claimed, are used shown (examples 1-31 to provide the instant amounts of active biocide. High absorbability is the mayor feature (P. 9, lines 8-17).

Claims ~~24-30~~<sup>43-55</sup> are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollen – WO 93/098177 or Ohno – 4579779 in view of Burke FP 0106562.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a microbiocidal composition, to use one of Rollen or Ohno modified with Burke. To provide acceptable application an in cosmetic, oil field area. Ohno teaches one having ordinary skill in the art would be motivated to perform

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this modification in order to provide controlled release, which Burke shows enhanced safety.

Rollen (above) shows utility of the instant biocides with a variety of particulate carriers, inclusive of the instantly claimed amorphous and yosticate types. This is also shown by Burke (above) while Ohno (above) addresses amorphous ortica. These references show the instant compositions can be prepared to adsorb and release biocides, thus, provide antimicrobial protection wherever used. Useful areas are shown to include cosmetic, oil mud and coating/painting formulations. The particular test would be within the skill of one in the art to perform, but results would follow as a function of the composition, which are obvious combination of the prior art materials.

Applicant's arguments filed on 7/24/03 have been fully considered but they are not persuasive. Applicants argument have been considered, but rejections maintained for reasons given above, where amendment, and argument failed to overcome the prior art. Claims 29, 30, 48, 49, 52-55 if conjoined with claim 47 biocides, are not obvious over the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

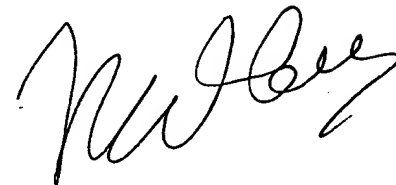
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink, appearing to read "Neil S. Levy", written in a cursive style.

Levy/LR  
October 21, 2003

NEIL S. LEVY  
PRIMARY EXAMINER